

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
INTERNATIONAL TITANIUM, INC.,

Appellant,

v.

GRANT COUNTY CLEAN AIR
CONTROL BOARD,

Respondent.

PCHB No. 84-90

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal from the issuance of three \$250 civil penalties for the alleged violation of respondent's Regulation I, came before the Pollution Control Hearings Board; Gayle Rothrock and Lawrence J. Faulk (presiding) on June 6, 1984, in Ephrata, Washington.

Appellant was represented by its attorney, Richard U. Chapin; respondent was represented by its attorney Jeffrey Earl. The proceedings were electronically recorded.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 International Titanium, Inc., is a corporation located in Moses
4 Lake, Washington. The company imports titanium from Australia and
5 processes it into titanium sponge which is used largely in the
6 aerospace industry.

7 II

8 On January 5, 1984, at about 2:45 p.m., respondent's clean air
9 control officer, while on routine patrol, observed a visible emission
10 extending from the barrels of material stored on the east end of
11 appellant's reduction building, south, across Wheeler Road and beyond
12 the old U & I Sugar processing plant.

13 On January 6, 1984, the clean air control officer issued appellant
14 a notice of violation both for the alleged violation of particulate
15 standards (Section 5.02(2) of Regulation I), and of appellant's own
16 Notice of Construction.

17 III

18 On March 7, 1984, the clean air control officer for respondent
19 issued two notices of violation for alleged particulate emissions
20 which occurred on February 29, 1984. The notices of violation were
21 issued as a result of regular pollution incident reports received from
22 the appellant. Respondent alleges these emissions violated Section
23 5.02(2) of Regulation I concerning the prevention of particulate
24 matter becoming airborne and entering onto other property.

IV

On March 8, 1984, the Grant County Clean Air Control Board declared that appellant was in violation of Section 5.02(2) of Regulation I by allowing particulate matter to become airborne on three occasions and that penalties should be issued.

V

On March 16, 1984, appellant was issued a \$250 civil penalty for each of the three violations. An appeal of each penalty was filed with the Board on April 9, 1984.

VI

The emissions which are the subject of these three violations emanated from the storage facility of appellant. The residue (titanium oxide) from the production of titanium metal is stored in 55 gallon drums which, if mixed with rain, causes the barrel to corrode and creates an emission to the atmosphere.

Appellant indicates they now store the residue in plastic bags, inside 55 gallon drums, then cover the barrels with plastic bags. The entire barrel storage area is now covered with a tarp.

VII

The procedure agreed to by respondent and appellant to monitor emissions of appellant's plant provides for appellant to fill out a pollution incident report on the occasion of any suspected air polluting emissions. Each report is submitted to the respondent. Respondent then determines from the information on the form, without any corroborative evidence, if a violation really has occurred.

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VIII

Appellant maintains that it is unfair to assess the maximum fine when they have voluntarily cooperated fully with respondent to control emissions from their plant. They voluntarily submit the information to respondent upon which a notice of violation is based. Two of the three penalties assessed were based on such notices of violation. In addition, appellant has taken steps to eliminate the problem with the storage facility which is the cause of these alleged violations. These are the first recorded violations of Regulation I by appellant.

IX

Pursuant to RCW 43.21B.260, respondent has filed a certified copy of its Regulation I and amendments thereto which are noticed.

Section 5.02(2) makes unlawful for any person to cause or permit the emission of particulate matter from any source which becomes deposited beyond the property of others in sufficient quantity to interfere unreasonably with the use and enjoyment of the property upon which the material is deposited.

Section 7.02 provides for a civil penalty up to \$250 per day for each violation of Regulation I.

X

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings the Board comes to the following

1 CONCLUSIONS OF LAW

2 I

3 Respondent did prove that an emission occurred on January 5,
4 1984. Therefore, the penalty for that emission should be affirmed,
5 but partly mitigated for reasons set forth in Finding of Fact VIII.

6 II

7 We conclude that respondent did not prove that appellant violated
8 Section 5.02(2) on February 29, 1984.

9 III

10 The Board finds that it is unreasonable for the respondent to rely
11 upon the appellant to supply information upon which to base a
12 violation without corroborative testimony or evidence from affected
13 property owners; e.g., testimony, pictures, source testing, monitoring
14 station reports, opacity readings or other first hand knowledge made
15 known to respondent. If respondent is going to operate effectively
16 then it must allocate the resources necessary to obtain such evidence.

17 IV

18 Any Finding of Fact which should be deemed a Conclusion of Law is
19 hereby adopted as such.

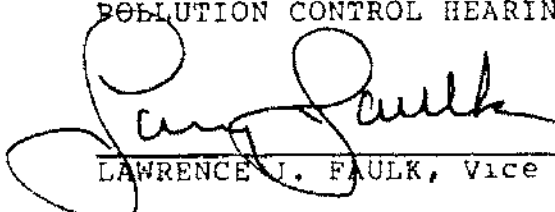
20 From these Conclusions the Board enters this
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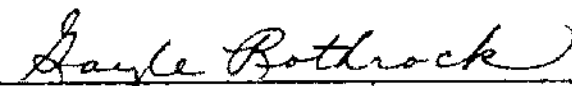
ORDER

The penalty associated with the January 5, 1984, emission is affirmed, however, one-half the penalty of \$250 is suspended provided that appellant not violate any provisions of respondent's Regulation I for a period of six months from the date of issuance of this Order. Civil penalties associated with the February 29, 1984, emissions are vacated.

DONE this 20th day of June, 1984.

POLLUTION CONTROL HEARINGS BOARD

 6/20/84
LAWRENCE J. FAULK, Vice Chairman


GAYLE ROTHROCK, Chairman